

VOLUNTARY DEPARTURE

- I. VD defined
 - A. “closest thing to a guilty plea in immigration court”
 - B. C.F.R. § 1240.26
 - C. Limited alternative relief to an order of removal
 - D. Two types of VD
 - 1. Pre-conclusion (INA § 240B(a))
 - 2. Post-conclusion (INA § 240B(b))
 - E. Common attributes
 - 1. Period of time to voluntarily depart the United States
 - 2. Alternative order of removal if alien fails to depart
 - 3. Failure to depart results in serious consequences to certain forms of relief
- II. Pre-conclusion
 - A. Usually during the “master calendar” phase of proceedings
 - B. Maximum of 120 days
 - C. Once an individual hearing is scheduled, pre-conclusion VD is unavailable unless stipulated to by DHS
 - 1. Commonly used in practice as an inducement for Respondent to withdraw an application without merit at the individual hearing
 - 2. Waives right to appeal as a final order (e.g. note on summary order)
 - D. Does not require a departure bond (but one can be set per discretion of IJ)
 - E. Discretionary considerations for the IJ
- III. Post-conclusion
 - A. Not statutorily eligible if NTA issued within one year of the alien’s last entry
 - B. After a case-dispositive decision by the IJ
 - C. Maximum of 60 days

- D. Minimum \$500 departure bond per discretion of IJ
- E. Statutory requirements
- F. Discretionary considerations for the IJ

IV. Advisals to Respondent

- A. Best practice is to use a script
- B. Respondent must acknowledge pre-conclusion VD is a final order that waives or gives up their right to appeal
- C. Proof that post-conclusion voluntary departure bond has been paid must be filed with BIA no later than 30 days after notice of appeal or the VD order will not be reinstated in Board's final order; *see* 8 C.F.R. § 1240.26(c)(4)
- D. Failure by the IJ to give the above advisal will guarantee the case will come back to you on remand by the Board

V. Miscellaneous issues

- A. IJ is limited by statute on maximum departure period (but can be creative with docket management)
- B. Arriving aliens are not statutorily eligible for voluntary departure (but can move to withdraw their application for admission)

VI. Case law review

- A. *Matter of Arguelles-Campos*, 22 I&N Dec. 811, 817 (BIA 1999)
- B. *Matter of Ocampo*, 22 I&N Dec. 1301 (BIA 2000)
- C. *Matter of Velasco*, 25 I&N Dec. 143 (BIA 2009)
- D. *Matter of Gamero*, 25 I&N Dec. 164 (BIA 2009)
- E. *Matter of C-B-*, 25 I&N Dec. 888, 891–92 (BIA 2012)
- F. *Matter of Pinzon*, 26 I&N Dec. 189, 196 (BIA 2013)